must be individualized in each case and must be practiced, since it initially feels somewhat awkward for us to be speaking in this manner to patients' families. However, it is medically and ethically correct, and I find it a much more satisfying form of medical practice than performing as some sort of medical technician in the service of a legal system that has failed to solve the question of medical futility.

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Ethical Issues—Physicians and Managed Care

Stephen J. Wallach MD

Health care delivery, a long-standing cottage industry, has undergone change during the past five years. Large for-profit corporations have gained increasing market share in various parts of the country and Hawaii is not immune to this phenomenon. The payers of health care, business, labor and government have determined that costs have been escalating and management is absolutely essential for economic survival. As health care costs have risen and calls for more cost-conscious health care have been made, health insurers increasingly have adopted principles of managed care. There is no assurance that high levels of quality will be maintained. Some managed care programs have developed so that profit is the only motive and physicians have been forced to ratchet-down services. Some corporate heads have made large personal profits while decreasing patient care and physician reimbursement. Insurance companies have purchased physician practices or entered into very restrictive managed care contracts with physicians. A tremendous threat exists to the sanctity of the doctor-patient relationship.

Hawaii has a unique system because of the Pre-paid Health Insurance Act. Managed care has been in Hawaii for a long time. The competition between managed care and traditional fee for service has maintained high quality, and costs have been controlled, but the rise of medical inflation has not. Hawaii has large populations of Medicaid, Medicare, state and county employees, federal employees, hotel workers, large businesses, and labors unions. These large groups can be shifted into more restrictive managed care with relative ease. There is a concern that Hawaii will attract a ruthless Mainland-type of company seeking large market shares, significant penetration of the marketplace, and will be concerned only with the bottom line of profits without concern for quality of care.

Managed care plans use a number of techniques, some are directed at subscribers, some at physicians, by creating economies of scale, by coordinating care among physicians and hospitals, mandating the use of guidelines or parameters of care and establishing advanced information systems that provide an improved basis on which to measure quality and efficiency.

Managed care plans can constrain the costs of participating physicians' practices in several ways. The plan could restrict physicians from performing certain procedures, or from ordering certain medications or diagnostic tests. Managed care plans use programs of utilization review to detect what they consider unnecessarily costly practice patterns. Sometimes these programs become harassing, intimidating, and deceptive. They can encourage physicians to make cost-conscious treatment decisions through the use of financial incentives. Some plans pay bonuses to physicians, with the amount of the bonus increasing as the plan's expenditures for patient care decrease.

While efforts to contain costs are critical and many of the approaches of managed care have an impact, managed care can compromise the quality and integrity of the patient-physician relationship and reduce the quality of care received by patients. In particular, by creating conflicting loyalties for the physician, some of the managed care techniques can undermine the physician's fundamental obligation to serve as a patient advocate. Moreover, managed care can withhold appropriate diagnostic procedures or treatment modalities from the patient.

The Patient-Physician Relationship

The foundation of the doctor-patient relationship is based on the trust that physicians are dedicated first and foremost to serving the needs of their patients. It is trust that enables patients to communicate private information and to place their health and their lives in the hands of physicians. Patients trust that physicians will do everything in their power to help them. No other segment of the health system is charged with the responsibility of advocating for patients, and no other segment can be expected to reasonably assume the responsibility conscientiously. Physicians who care for patients directly are in the best position to know patients' interests and can advocate within the health care system for patients' needs.

Ethical Concerns

Ethical concerns with managed care arise because of at least two conflicting loyalties for the physician. First, physicians are expected to balance the interests of their patients with the interests of other patients. Second, managed care can place the needs of patients in conflict with the financial interests of the physicians. Managed care plans use bonuses and fee withholding to make physicians cost conscious. As a result, when physicians are deciding whether to order a test, they will recognize that it could have an adverse effect on their incomes.

Conflicts Among Patients

Some cost containment can be achieved by eliminating waste and improving efficiency. Cost containment is being achieved by limiting the availability of tests or procedures that offer only small or uncertain benefit, or that provide a likely benefit but at great expense. Because managed care plans generally work

within a limited budget and increasingly are for-profit companies that compete to report favorable results to shareholders, the cost of service will influence whether the service is offered to patients who might benefit from it. Allocation rules are developed by plans to deal with this issue.

Managed care plans can make these allocation decisions in a number of ways: By developing guidelines that determine for a physician when the service should be offered, by instructing physicians to provide medically necessary care, and delegating to the physicians the allocation decisions, or by some combination of allocation guidelines, physician discretion, and oversight.

Ethical Problems with Bedside Rationing

Physicians make cost benefit judgments every day as a part of their professional responsibility in treating patients. It is unethical to knowingly provide unnecessary care or to be wasteful in providing needed care. It has been demonstrated that even in an exclusively fee-for-service system, physicians overall respond to credible information about the effectiveness of their practices.

Allocation judgments about costs and services that approach a rationing decision or denial of a procedure that benefits a patient are not part of the physician's traditional role and, indeed, conflict with it. Although physicians have traditionally served as de facto gatekeepers to the health care system, overseeing the public's use of medical care, the cost primacy environment of managed care significantly complicates this.

The primary care physician's role in managed care illustrates the ethical problems associated with bedside rationing. The physician gatekeeper determines whether the patient will be granted further access to the health care system, including referrals to specialists and diagnostic tests. At the same time, the physician is required by rules and encouraged by incentives, to be aware of the overall financial limitations of the managed care entity for which he or she works. These competing concerns mean that a patient's further treatment depends not only on the physician's judgment about the legitimacy of the present medical need but also on the relative weight of that need in comparison with the organizational need to serve all patients and to control costs.

The physician is obligated to provide or recommend treatment when he or she believes that the treatment will materially benefit the patient, not to withhold treatment to preserve the plan's resources. It is imperative that physicians contribute their expertise to developing guidelines and advocating for the consideration of differences among patients.

Organization of Managed Care Structures

The American Medical Association recommends that managed care organizations establish a medical staff structure much like every hospital in the United States. The governing board of a managed care organization should have physician members as representatives of participating physicians. According to the Stark Law this cannot be more than 20% of the composition. There should be a medical board, completely comprised of physicians, responsible for review of quality of care, credentialing of physicians, and review of restriction of patient services. The governing board would be ultimately responsible for the activities of the managed care organization, but participating physicians would have formal mechanisms for input and responsibilities on crucial medical practice issues.

Patient's Role

In addition to the physician's role in making rationing decisions, there is an equally critical role for patients. The decision-making process should include some mechanism for taking into account the preferences and values of the people most directly affected. Accurate and full disclosure is most important.

Once guidelines and criteria are developed at the policy level, physicians are free to make clinical decisions based on those guidelines and criteria. In addition to the development of appropriate procedures for making allocation decisions, there are other steps that must be taken to protect patient welfare when the allocation procedures are implemented. With full understanding of the limitations affecting their treatment, patients will have the opportunity to make alternative arrangements for care that is not available in their health plan.

There are two important ways in which financial incentives to limit care compromise the physician's loyalty to patient care. First, physicians have an incentive to cut corners in their patient care by temporizing too long, eschewing extra diagnostic tests, or refraining from an expensive referral. Second, even in the absence of actual patient harm, the incentives may erode patient trust as patients wonder whether they are receiving all necessary care or are being denied care because of the physician's pecuniary concerns. Physicians should not participate in any plan that requires care below minimum professional standards.

Appeals Process

It is critical for managed care plans to have a well-structured appeals process through which physicians and patients can challenge the denial of a particular diagnostic test or therapeutic procedure. Such a process should afford the physician an opportunity to advocate on the patient's behalf before the plan's medical board or governing board. Managed care plans as institutions have an ethical responsibility to allow patients to challenge treatment decisions that directly affect their health and well-being.

Patients' Interests

Physicians must place patients' interests ahead of their own interests, including financial remuneration. Financial conflicts are inherent in the practice of medicine, regardless of the system of

delivery. Generally physicians have been able to maintain their duty to patient welfare despite those conflicts. However, incentives to limit care are more problematic than measures to provide care.

Quality of Care

The most effective way to eliminate inappropriate conflicts is to create the use of financial incentives based on quality rather than quantity of services. Reimbursement that serves to promote a standard of appropriate behavior helps to maintain goals of professionalism.

Judgments about the quality of a physician's practice should reflect several measures.

1. It is essential to consider objective outcomes data, including data about mortality and morbidity, corrected for case load and severalty.
2. Because outcomes are often beyond a physician's control, it is important to consider the degree to which the physician adheres to practice guidelines or other standards of care.
3. Patient satisfaction should be considered.

Because measurements of quality are still in the rudimentary stages of development, it is important to ensure that other safeguards are in place to prevent abuse from incentives based on quantity of care. Reasonable limits should be placed on the extent to which a physician's ordering of services can affect his or her income. For example quantitative financial incentives should be calculated for groups of physicians rather than individuals.

Public Participation

Public participation in formulating benefits packages may resolve concerns of limited autonomy. Legislation reasonably protecting patients' rights to be informed and to choose, and protecting physician's rights to remain professionals, is also essential. Patients can exercise their autonomy by participating in the decisions of their health plan or in government processes that may restrict their choices or their benefits. In addition, patients have a responsibility to learn as much as they can about the choices of plans, including the exact nature of different benefit packages and their limitations. Patients have a responsibility to make sure they know and understand the terms of their own health plan.

Patient Autonomy and Responsibility

Patient autonomy does not guarantee the right to have all treatment choices funded. Some limits on personal freedom are inevitable in a society that tries to provide all of its members with adequate health care. Patient autonomy entails patient responsibility, including a responsibility to abide by societal decisions to conserve health care and to make an individual effort to use resources wisely and lead a healthy life-style.

Patient Advocacy

As patient advocates, physicians continue to have duties of disclosure and informed consent. They must ensure that all treatment alternatives regardless of cost are disclosed. They must also ensure that the managed care organization has fulfilled its obligation to disclose the terms of the benefits packages including all limitations and restrictions.

While physicians must remain patient advocates, patients do not have an unlimited claim to physicians' obligation to provide health care. Physicians should not manipulate or game the system in order to answer patients' demands. Any broad allocation guidelines should be established at the policy-making level so that physicians are not asked to engage in ad hoc bedside rationing.

There are ethical dilemmas that arise from managed care; safeguards must be built into the structure of the plan for the protection of the physician, patient, hospital and plan. The physician-patient relationship must be nurtured and preserved.

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